DOCUMENT RESUME

ED 051 730 HE 002 132

AUTHOR	Young, D. Parker; Gehring, Donald D.
TITLE	Briefs of Selected Court Cases Affecting Student Dissent and Discipline in Higher Education.
INSTITUTION	Georgia Univ., Athens. Inst. of Higher Education.
PUB DATE	70
NOTE	55p.
EDRS PRICE	EDRS Price MF-$0.65 HC-$3.29
DESCRIPTORS	*Activism, *College Students, Court Cases, *Court Litigation, *Discipline, Discipline Policy, *Higher Education
IDENTIFIERS	*Due Process, *Speaker Bans

ABSTRACT

The briefs of selected court cases affecting student dissent and discipline in higher education presented in this report are divided in the following sections: (1) relationship between students and the institution, including contractual theory and in loco parentis; (2) relationship between the courts and education, including cases involving jurisdiction, state action, and scholastic affairs; (3) due process, including cases involving: specificity of rules, notice and hearing, right to counsel, off campus judicial proceedings, freedom of speech, expression and assembly, speaker bans, search and seizure and interim suspension; and (4) equal protection. (AF)

ED051730

BRIEFS OF SELECTED COURT CASES AFFECTING STUDENT DISSENT AND DISCIPLINE IN HIGHER EDUCATION

by

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and

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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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FOREWORD

This publication has been prepared to assist administrators in higher education in formulating policies pertaining to students and their various activities. The cases included reflect the more important findings involving the law and student discipline and dissent, and should not be construed as an exhaustive listing. Many cases could have been listed under several different categories but were placed in the area of the major issue decided for that particular case.

Some administrators may desire to read an entire case. For those who desire to do so and have access to a law library but are unfamiliar with legal citations the following example may be helpful.

Powe v. Miles, 294 F. Supp. 1269. The first number (294) refers to the volume of the publication. The last number (1269) refers to the page on which the case is found. The abbreviation between the two numerical references in the publications in which the case is reported. In this example F. Supp. refers to the Federal Supplement. An F. 2d would refer to the Second Series of the Federal Reporter.

D. P. Y.
D. D. G.

I. RELATIONSHIP BETWEEN STUDENTS AND THE INSTITUTION

A. Contractual Theory

Green v. Howard University, 271 F. Supp. 609. United States District Court, District of Columbia. August, 1967.

Facts: Howard University, a private institution supported in part by the federal government, had stated in its catalog that the University reserved the right, and students conceded to the University the right, to deny admission to and to require withdrawal of any student at any time for any reason deemed sufficient to the University. Students participated in disturbances when the head of the Selective Service System of the U.S. was invited to speak at the University. The students were sent formal letters notifying them that they would not be permitted to return to the University for the next academic year. This action was taken without affording the students the opportunity of notice and hearing.

Issue: Do statements in the catalog of a private university constitute a contract and thus relieve the institution of affording students with "due process" - specifically notice and hearing?

Answer: Yes.

Reasoning of the Court: "The procedural safeguards and the privileges accorded by the Constitution of the United States are confined solely to judicial and quasi-judicial proceedings, either in the courts or before administrative agencies. They are directed solely against Governmental action." Howard University was created as a private corporation by an Act of Congress, and although it receives federal support, it is not a governmental body.

Jones v. Vassar College, 299 N.Y.S. 2d 283. Supreme Court of Dutchess County. April, 1969.

Facts: The constitution of the Vassar College Student Government Association gave the students, through their elected representatives, the responsibility for enacting and enforcing undergraduate social regulations. New rules were enacted which permitted the female students living in each corridor of the residential halls to decide whether or not they wished limitations to be placed upon the hours during which they might receive male guests in their rooms. The President of Vassar College did not exercise his power of veto over the student enacted legislation, thereby giving approval to the change in rules and regulations voted upon by the students and enacted by the Vassar College Student Government Association. The mother of one of

the female students commenced court action claiming that the new rules constituted a breach of implied contract.

Issue: Does a drastic change in social rules and regulations, by a private college, constitute a breach of implied contract with a student or his parents?

Answer: No.

Reasoning of the Court: There has been no showing that there was an abuse of discretion by the college authorities in approving and adopting the new rules and regulations. Mere speculation as to the possible consequences of conduct complained of is insufficient for judicial interference. "Private colleges and universities are governed on the principle of academic self regulation, free from judicial restraints."

Additional Comments: This case was decided in one of the lower state courts in New York. It upholds the right of private institutions to govern themselves in any manner they choose so long as there is an absence of arbitrary or capricious action.

B. In Loco Parentis

Gott v. Berea College, 161 S.W. 204. Court of Appeals of Kentucky. December, 1913.

Facts: The faculty of Berea College promulgated a rule forbidding students from entering eating houses and places of amusement in Berea which were not controlled by the College. Several students who violated this rule were dismissed. Gott, the owner of a restaurant in Berea, brought action against the College seeking to prevent enforcement of this rule.

Issue: Is it within the power of college officials to enact rules governing students to the same extent as parents could?

Answer: Yes.

Reasoning of the Court: "College authorities stand in loco parentis concerning the physical and moral welfare and mental training of the pupils, and we are unable to see why, to that end, they may not make any rule or regulation for the government or betterment of their pupils that a parent could for the same purpose." The court also noted that a more critical view would be taken of rules in a public institution.

Additional Comments: For constitutional purposes, the courts no longer accept the doctrine of in loco parentis when applied to college regulations.

II. RELATIONSHIP BETWEEN THE COURTS AND EDUCATION

A. Jurisdiction

Hamilton v. Regents of the University of California, 293 U.S. 245. December, 1934.

Facts: The Regents of the University of California had promulgated an order requiring every student to participate in two years of military science courses. Two students, who objected to this requirement on religious grounds, were suspended for failure to take the prescribed courses.

Issue: Does a Regents' order requiring students to participate in military science courses infringe on the rights granted under the Fourteenth Amendment of the United States Constitution?

Answer: No.

Reasoning of the Court: The Regents are a department or function of the state government and empowered to enact orders in respect to the organization and government of the University. The order was not within the protection of the Fourteenth Amendment. The contention that the Fourteenth Amendment, as a safeguard of "liberty," confers the right to attend the State University free from an obligation to take military training as a condition of attendance is untenable." . . . by the California constitution the Regents are, with exceptions not material here, fully empowered in respect of the organization and government of the University, which as it has been held, is a constitutional department or function of the state government."

Goldberg v. Regents of University of California, 57 Cal. Rptr. 463. California Court of Appeals. February, 1967.

Facts: Several students engaged in rallies on campus to protect the arrest of a nonstudent. During the rallies objectionable signs and language were used by the protesting students. Hearings were held and the students were suspended.

Issue: Was the University's requirement that students refrain from the repeated public use of certain terms which infringed on minimum standards of propriety reasonably necessary to further the educational goals of the institution?

Answer: Yes.

Reasoning of the Court: "We hold that in this case, the University's disciplinary action was a proper exercise of its inherent general powers to maintain order on the campus and to exclude therefrom those who are detrimental to its well being." The court also pointed out that the Regents

have the authority to establish rules with respect to the organization and government of the University including the power to maintain order and decorum on campus by all appropriate means. "Thus, in an academic community, greater freedoms and greater restrictions may prevail than in society at large, and the subtle fixing of these limits should, in a large measure be left to the educational institution."

Schuyler v. State University of New York at Albany, 297 N.Y.S. 2d 368. New York State Supreme Court, Appellate Division. February, 1969.

Facts: Students at the State University of New York at Albany were accused of taking part in a demonstration which violated University regulations governing protests and demonstrations. The demonstration was boisterous and abusive and resulted in complete disruption of the orderly functioning of the University. The students claimed that the rules and regulations of the University had not been filed with the Department of State as required by the State Constitution (unless the rules relate to the "internal management" of the organization); hence, the University officials had no right to institute disciplinary proceedings against them.

Issue: In the absence of arbitrary or capricious action do college and University officials possess an inherent authority to maintain order on the campus, to insure freedom of movement, and to discipline, suspend and expel students whose conduct is disruptive?

Answer: Yes.

Reasoning of the Court: There has been no arbitrary or capricious action on the part of the University officials. Rules and regulations of the University relate to internal management of the University and therefore need not be filed in order to be effective. College and University officials possess an inherent authority to maintain order on the campus, to insure freedom of movement, and to discipline, suspend and expel students whose conduct is disruptive.

Additional Comments: Although this case was concerned with a technicality, it is nevertheless important since the Court upheld the authority of each administration to set rules and regulations consistent with the lawful aims and purposes of the institution.

B. State Action

Grossner v. Trustees of Columbia University in City of New York, 287 F. Supp. 535. United States District Court, S.D. New York. July, 1968.

Facts: Several students were dismissed from Columbia University as a result of their participation in the occupancy of University buildings, President Kirk's office, and holding captive in his office for some twenty-four hours

the Acting Dean of Columbia College. The students alleged that Columbia University performs a public function by educating persons and receives public funds (primarily for research activities) and therefore constitutes "state action" so as to be subject to federal constitutional requirements.

Issue: Does the fact that a college or university educates persons and receives public funds involve it in "state action" subject to federal consitutional requirements?

Answer: No.

Reasoning of the Court: It is correct in a trivial way to say that education is impressed with a public interest. Many things are. Even those students dismissed in the instant case have not suggested that the University must allow all comers to demonstrate within its buildings. Nothing supports the thesis that university (or private elementary) "education" as such is "state action." ". . . receipt of money from the State is not, without a good deal more, enough to make the recipient an agency or instrumentality of the Government. Otherwise, all kinds of contractors and enterprises, increasingly dependent upon government business for much larger proportions of income than those here in question, would find themselves charged with "state action" in the performance of all kinds of functions we still consider and treat as essentially "private" for all presently relevant purposes."

Additional Comments: What constitutes "state action" is most elusive and must be determined from the facts in each individual case.

Powe v. Miles, 294 F. Supp. 1269. United States District Court, W.D. New York. 1968.

Facts: Students at Alfred University, a private institution in New York, "demonstrated" during an ROTC drill ceremony causing much disruption and alteration of that ceremony. Following due process procedures established by the University, the demonstrators were suspended for one semester. The students sought relief in court alleging that the Ceramics College operated by the University under contract with the state of New York was sufficient to make the University an instrument of the state for purposes of the Federal Civil Rights Act.

Issue: Does the receipt of state funds by a private institution from a contract with the state calling for the operation of various programs or courses of study involve that institution in "state action" subject to the provisions of the Federal Civil Rights Act?

Answer: No.

Reasoning of the Court: "There is no evidence of even the slightest contact between the state of New York and the specific action taken against the students." The administration of campus life, the day-in and day-out operation of the University, and especially the discipline of the students, is handled exclusively by Alfred University. The receipt of state funds for the Ceramics College is simply not sufficient to make Alfred University an instrument of the state for purposes of the Federal Civil Rights Act. ". . . if state financial aid alone were the test, construction contractors and many other enterprises with extensive contracts with the state would be charged with 'state action'."

Additional Comments: The significance of this case is that the privateness of an institution is not significantly impaired by virtue of a contract with a state under a statute such as the New York Education Law. It must be remembered, however, that what constitutes "state action" is most elusive and must be determined from the facts in each individual case.

Powe v. Miles, 407 F. 2d. United States Court of Appeals, Second Circuit. December, 1968.

Facts: The facts in this case are the same as those in Powe v. Miles, 294 F. Supp. 1269. This case is an appeal of the United States District Court decision in the former case.

Issue: Does the receipt of state funds by a private institution from a contract with the state calling for the operation of a College of Ceramics involve that institution in "state action" subject to the provisions of the Federal Civil Rights Act?

Answer: No, with the exception of the College of Ceramics.

Reasoning of the Court: The very name "New York State College of Ceramics at Alfred University" identifies the College as a state institution. Thus students enrolled in the College of Ceramics can regard themselves as receiving public education and entitled to be treated by those in charge in the same way as their counterparts in other portions of the State University. Therefore, action against students in the College of Ceramics constitutes "state action." Suspension of the students enrolled in the Liberal Arts College of Alfred University did not constitute "state action." Alfred University simply operated a College of Ceramics for the State of New York. "We do not have at all a case where the wholly state-supported activity is so dominant that the private activity could be deemed to have been swallowed up."

Browns v. Mitchell, 409 F. 2d. 593. United States Court of Appeals, Tenth Circuit. January, 1969.

Facts: Several students physically occupied a non-public area of the Registrar's Office at the University of Denver, a private university. As a result of this sit-in several students were suspended and subsequently brought action contending that the tax exempt status of the University amounted to a bounty in furtherance of the public function of educating people therefore constituting "state action."

Issue: Does tax exemption by a state to a private university cause that university to be involved in "state action" and therefore subject to applicable federal constitutional provisions?

Answer: No.

Reasoning of the Court: "The benefits conferred on the University, however characterized, have no bearing on the challenged actions beyond the perpetuation of the institution itself." Nothing indicates that there is "state action."

Torres v. Puerto Rico Junior College, 298 F. Supp. 458. United States District Court, D. Puerto Rico. April, 1969.

Facts: Six students who were suspended from the College alleged that the College's receipt of federal funds for plant development and regular operations and some Commonwealth funds for scholarships constituted "state action." The students further contended that their constitutional rights were violated by virtue of the alleged "state action." Puerto Rico Junior College is a private institution.

Issue: Does receipt of such aid amount to "state action?"

Answer: No.

Reasoning of the Court: The funds received by the College are insubstantial when compared to the institution's total resources. "The evidence taken as a whole does not establish, even remotely, that there is governmental involvement of such nature as would justify this Court in holding that Puerto Rico Junior College is either a state or federal agency or is acting under color of state or federal authority . . ." Thus there is no "state action" involved.

C. Scholastic Affairs

Connelly v. University of Vermont and State Agricultural College, 244 F. Supp. 156. United States District Court, D. Vermont. July, 1965.

Facts: A third year medical student missed almost one month of classes due to illness. He was given an opportunity to make up the work he had missed. After having taken his make up work he was advised that he had failed and was hence dismissed. A petition by the student to repeat his third year was denied. The student then brought court action to require the College to reinstate him alleging that his work was of passing quality.

Issue: If not motivated by bad faith, arbitrariness, or capriciousness, do college officials have absolute discretion in determining whether a student has been delinquent in his studies?

Answer: Yes.

Reasoning of the Court: College authorities have absolute authority in determining if a student has been delinquent in his studies, and the burden of proof is on the student to show arbitrariness, capriciousness or bad faith. "The reason for this rule is that in matters of scholarship, the school authorities are uniquely qualified by training and experience to judge the qualifications of a student, and efficiency of instruction depends in no small degree upon the school faculty's freedom from interference from other noneducational tribunals." Only when the college abuses this discretion will the Courts interfere.

University of Miami v. Militana, 184 So. 2d. 701. District Court of Appeals of Florida, Third District. March, 1966.

Facts: A medical student at the University of Miami was promoted to the fourth year on probation subject to satisfactory work and re-examination in two subject areas. The student did not satisfactorily complete work in one of the subject areas and was dismissed for academic failure. Conditions for promotion were outlined in the catalog. The student brought action to require the University to promote him which was granted by the Circuit Court. The University appealed.

Issue: Can a private college or university set forth the terms under which it will graduate students?

Answer: Yes.

Reasoning of the Court: The terms and conditions for graduation are offered by the publications of the college at the time of enrollment and have some of the characteristics of a contract. ". . . promotion from one class to another is clearly within the discretion of the faculty (Promotions Committee) of the School of Medicine at the University of Miami . . ."

Mustell v. Rose, 211 So. 2d. 489. Supreme Court of Alabama. June, 1968.

Facts: A student failed two courses in the Medical College of the University of Alabama whereupon the Promotions Committee decided to dismiss him from the college. The student alleged that the professors gave him grades lower than were warranted since an average of various grades received during the courses indicated a passing grade. The professors maintained that these various grades were only tentative and that final grades were based on an overall performance of the student which included oral questions as well. The student also maintained that the decision that he be dismissed was not in accordance with due process since it took place in his absence and that he was not permitted to be present at the hearing.

Issue: If not motivated by bad faith, arbitrariness, capriciousness, or unreasonableness, do school authorities have absolute discretion in determining whether a college student has been delinquent in his studies and therefore able to dismiss the student even without following the due process requirement of notice and hearing as is essential in disciplinary dismissal cases?

Answer: Yes.

Reasoning of the Court: In the Courts' opinion, there is no evidence of discrimination or unfairness in these dealings with the student and the evidence supports the awarding of a failure in the courses. The rule of judicial nonintervention in scholastic affairs is particularly applicable in the case of a medical school, as courts are not supposed to be learned in medicine and are not qualified to pass an opinion as to the attainments of a student in medicine.

Failure to attain a standard of excellence in academic studies is a very different matter from misconduct. "Even the federal courts have not yet gone so far as to require the notice and presence of the student when a decision is being reached to dismiss a student for failing to meet the required scholastic standards."

Additional Comments: Aside from reaffirming the doctrine of judicial nonintervention in scholastic affairs, the Court pointedly indicated that even the federal courts have not yet required due process notice and hearing in scholastic dismissal cases. The use of the word "yet" gives rise to the possibility, at least in the mind of this Court, that such a requirement could become a future reality as the Courts define due process through "the gradual process of judicial inclusion and exclusion."

DePina v. Educational Testing Service, 297 N.Y.S. 2d 472. Supreme Court, Appellate Division, Second Department. January, 1969.

Facts: A student who took the College Entrance Examination Board Tests had the results reported to the United States Merchant Marine Academy. An investigation and comparison of the student's examination papers with those of another student revealed circumstances which indicated, prima facie, that the student had cheated. The student was requested to take a re-exam. The student initiated court action to prevent Educational Testing Service from requiring him to retake the exam.

Issue: Can a student be required to take a re-exam if there is reasonable cause to believe that he has cheated?

Answer: Yes.

Reasoning of the Court: In a case of this nature the Court must weigh the interest of the general public as well as the interests of the parties to the litigation. "It is our view that defendant (Educational Testing Service) acted within its rights and indeed within its obligations and duties to the Academy and to the public in requesting that plantiff (DePina) take a re-examination."

Additional Comments: What constitutes prima facie evidence of cheating must be determined in each case.

III. DUE PROCESS

A. Specificity of Rules

Soglin v. Kauffman, 295 F. Supp. 978. United States District Court, W. D. Wisconsin. December, 1968.

Facts: Students at the University of Wisconsin engaged in a "demonstration" on the Madison campus. University officials charged them with intentionally denying to others their right to interview for jobs with the Dow Chemical Corporation, intentionally inciting and counseling others to deny to others their right to interview for jobs with the Dow Chemical Corporation, and intentionally refusing to move and to unblock the hall and doorways of the Commerce building for the purpose of denying to others their right to interview for jobs with the Dow Chemical Corporation. Several students were expelled for "misconduct" and for violation of the University regulation providing that students may support causes by lawful means which do not disrupt the operations of the University, or organizations accorded the use of University facilities.

Issue: Does "misconduct" as a standard for disciplinary action by a university as well as a regulation allowing students to support causes by lawful means which do not disrupt the operations of the university, or organizations accorded the use of university facilities, violate the United States Constitution because of vagueness and overbreadth?

Answer: Yes.

Reasoning of the Court: "A federal, state, or local statute, ordinance, regulation, order or rule, subjecting one to imprisonment or fine or other serious sanction for 'misconduct' would surely fall as unconstitutionally vague." The Court also stated, "with so grossly broad a standard as 'misconduct', one need not strain to hypothesize applications which would be realistically predictable as well as 'possible', and which would demonstrate that the standard sweeps within its broad scope activities that are constitutionally protected free speech and assembly." ". . . a standard of 'misconduct', without more, may not serve as the sole foundation for the imposition of the sanction of expulsion, or the sanction of suspension for any significant time, throughout the entire range of student life in the university." When the standards of vagueness and overbreadth are applied to the university regulation allowing students to support causes by lawful means which do not disrupt the operations of the university, or organizations accorded the use of the university facilities, it must be found invalid. "Neither the element of intention, nor that of proximity of cause and effect, nor that of substantiality, for example, is dealt with by its language. Nor does it contain even the most general description of the kinds of conduct which might be considered disruptive of the operations of the university, nor does it undertake to draw any distinctions whatever as among the various categories of university 'operations'."

Additional Comments: Most courts have held that colleges and universities are not required to have specific rules and regulations to the extent necessary in criminal statutes. The instant case departs from this position.

Soglin v. Kauffman, 418 F. 2d. 163. United States Court of Appeals, Seventh Circuit. October, 1969.

Facts: The facts in this case are the same as those in Soglin v. Kauffman, 295 F. Supp. 978. The present case is an appeal, by Kauffman (Dean of Students, University of Wisconsin), of the decision rendered by the United States District Court in the former case.

Issue: Does "misconduct" as a standard for disciplinary action by a university violate the United States Constitution because of vagueness and overbreadth?

Answer: Yes.

Reasoning of the Court: "The ability to punish 'misconduct' per se affords no safeguards against the imposition of disciplinary proceedings overreaching permissible limits and penalizing activities which are free from any taint of impropriety." The Court did not dispute a university's right and power to protect itself against disruptive students through the disciplinary recourses of suspension or expulsion; however, it did point out that, "expulsion and prolonged suspension may not be imposed simply on the basis of allegations of 'misconduct' without reference to any preexisting rule which supplies an adequate guide." The Court further stated that "misconduct" gave no clues which could assist students or administrators in determining whether conduct not transgressing statutes is susceptible to punishment by a university.

Scott v. Alabama State Board of Education, 300 F. Supp. 163. United States District Court, M.D. Alabama, N.D. May, 1969.

Facts: Students at Alabama State College participated in what they termed a "demonstration" in and around the college dining hall. Their actions resulted in disruption of the orderly operations of the college, property damage, and finally the closing of the college for a period of two weeks. The students, on advise of counsel, refused to participate in the hearings and charged a denial of due process by virtue of vagueness of the charges. A goodly number of the students were found to be guilty and were dismissed or suspended.

Issue: Is due process denied if a student is suspended or dismissed after having been notified and found guilty of one or more satisfactory specific charges even though he was also charged with unduly vague charges?

Answer: No.

Reasoning of the Court: Although some of the charges do indeed lack the specificity required to enable a student adequately to prepare defenses against them, such a rigid and formalistic approach that one bad apple spoils the entire bushel, i.e., that if any of the charges against a student was unconstitutionally vague then he was deprived of an education without due process of law, cannot be adopted. Thus if a student was notified and found guilty of one satisfactorily specific charge, then his dismissal or suspension will not be held to be procedurally inadequate on the ground of vagueness, whether or not he was also charged with unduly vague charges.

Additional Comments: Although some of the charges were held to be vague in this case, the Court did not set forth the precise degree of specificity required in order to pass constitutional muster. The general standard seems to be the degree of specificity which allows a student to adequately prepare a defense against the charge. It will be interesting to see if a higher court will set forth guidelines in this area. However, it probably will remain that the facts in each individual case will determine the degree of specificity required.

The Court in this case went further and stated that the fact that college students believe strongly that their cause is right does not entitle them to use, in advancing that cause, any means that may seem effective at the moment, whether they are lawful or unlawful and whether or not they are consistent with the interest of others. The United States Supreme Court has stated many times that freedom of speech is not absolute and more recently that an apparently limitless variety of conduct cannot be labeled "speech" whenever the person engaging in the conduct intends thereby to express an idea.

B. Notice and Hearing

Dixon v. Alabama State Board of Education, 294 F. 2d. 150. United States Court of Appeals, Fifth Circuit. August, 1961.

Facts: Several students at Alabama State College participated in a sit-in at a lunch grill. Several of these students were expelled and others were placed on probation. The disciplinary action was taken without giving notice to the students of the charges against them and no hearing was granted prior to the action taken. The students appealed the judgement of the United States District Court, M.D. Alabama which upheld the dismissal.

Issue: Does "due process" require notice and some opportunity for hearing before students at a tax-supported college are expelled for misconduct?

Answer: Yes.

Reasoning of the Court: "In the disciplining of college students there are no considerations of immediate danger to the public, or of peril to the national security, which should prevent the Board from exercising at least the fundamental principles of fairness by giving the accused students notice of the charges and an opportunity to be heard in their own defense." The Court further stated that, ". . . the State cannot condition a privilege upon the renunciation of the constitutional right to procedural due process."

Additional Comments: This landmark case was decided by the second highest court in our federal judicial system and established the right of students at a tax-supported institution to notice and hearing prior to severe disciplinary action such as long term suspension or dismissal. The case has been cited by numerous other courts in decisions pertaining to student discipline. As a part of his decision Judge Rives set forth guidelines for procedural due process to be followed in similar cases. Because of the applicability and importance of these guidelines to all student discipline cases in public institutions they are presented here as they appear in the text of the Court's decision.

> For the guidance of the parties in the event of further proceedings, we state our views on the nature of the notice and hearing required by due process prior to expulsion from a state college or university. They should, we think, comply with the following standards. The notice should contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education. The nature of the hearing should vary depending upon the circumstances of the particular case. The case before us requires something more than an informal interview with an administrative authority of the college. By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses. In such circumstances, a hearing which gives the Board or the administrative authorities of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved. This is not to imply that a full-dress judicial hearing, with the right to cross-examine witnesses, is required. Such a hearing, with the attending publicity and disturbance of college activities, might be detrimental to the college's educational atmosphere and impractical to carry out. Nevertheless, the rudiments of an adversary proceeding may be preserved without encroaching upon the interests of the college. In the instant case, the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce

either oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student's inspection. If these rudimentary elements of fair play are followed in a case of misconduct of this particular type, we feel that the requirements of due process of law will have been fulfilled.

Knight v. State Board of Education, 200 F. Supp. 174. United States District Court, M.D. Tennessee. December, 1961.

Facts: The State Board of Education promulgated a policy to all institutions in their domain which stated that students arrested and convicted on charges of personal misconduct shall be promptly dismissed. Thirteen students at Tennessee A & I State University, after completing their college work in June, took part in a sit-in in Mississippi. The discipline committee of Tennessee A & I suspended the students without affording them the opportunity of notice and hearing. The students brought action which alleged that their constitutional rights were violated since they were never notified of the charges against them or given an opportunity to defend themselves.

Issue: Does "due process" require notice and hearing before students at a tax-supported institution may be suspended or expelled?

Answer: Yes.

Reasoning of the Court: The rudiments of fair play and the requirements of "due process" vested in the students the right to be advised or forewarned of the charges against them and an opportunity to present their side of the case before a university can invoke such a severe disciplinary action as suspension. "With respect to the type of notice and hearing to be provided, consideration should be given to the observations made by the Court of Appeals for the Fifth Circuit in the Dixon Case."

Esteban v. Central Missouri State College, 277 F. Supp. 649. United States District Court, W.D. Missouri. October, 1967.

Facts: Two students were suspended from the College after participating in "demonstrations." The students were orally advised of the reason the College was considering disciplinary action and were given an opportunity to make such explanations to the Dean of Men as they desired. The Dean of Men was only one member of the board which recommended suspension. The students were advised of their right to appeal the decision to the President of the College.

Issue: In a public university, does due process require that notice given a student be written rather than oral?

Answer: Yes.

Reasoning of the Court: Oral notification appears to have left some degree of uncertainty in the minds of the students of the ground or grounds upon which the College proposed to take action. "A written notice of the precise charges will remedy this situation." The Court went on to state that, "It is imperative that the students charged be given an opportunity to present their version of the case and to make such showing as they desire to the person or group of persons who have the authorized responsibility of determining the facts of the case and the nature of action, if any, to be taken."

Wright v. Texas Southern University, 392 F. 2d. 728. United States Court of Appeals, Fifth Circuit. April, 1968.

Facts: Several students at Texas Southern University violated University regulations. In addition, during a period of serious unrest and turbulence on the campus, these same students were involved in several assemblies which the students termed as "peaceable." During one of these assemblies students were exhorted to block the entrance way to a campus building so as to prevent entry by the faculty and students alike. The Dean in charge of administering student discipline personally observed these actions by the students. He also personally observed curfew violations. There were additional violations of University regulations. The Dean sought to give notice of a disciplinary hearing by written communications to the students. The students had failed to comply with a University regulation which required notifying the University of a change of address. For this reason the letters were returned and undelivered. The Dean exercised other efforts in order to reach the students. At the end of the quarter term the students were notified by certified mail that they would not be permitted to re-enter Texas Southern University. Suit was brought by the students in the United States District Court which denied the students injunctive relief and they appealed.

Issue: Has due process been denied where students did not receive notice of a disciplinary hearing, and were subsequently refused re-entry to the University, because they failed to keep the University advised of their addresses in violation of a valid University regulation?

Answer: No.

Reasoning of the Court: A student is not entitled to the formality of a trial, in the usual sense of that term, but is entitled to the benefit of the ordinary, well recognized principles of fair play. A student in seeking admission to and obtaining the benefits of attending a college or university

agrees to abide by and obey the rules and regulations promulgated for the orderly operation of that institution and for the effectuation of its purposes. The Dean of Students exercised his best efforts to inform the students of the nature of the University's complaints against them. No more is required. To order the students reinstated subject to holding a hearing on their grounds for suspension would be tantamount to condoning the irresponsible attitude exhibited by the students. It would be unreasonable to hold that a university could not take disciplinary action against students who could not be contacted although diligent attempts were made, particularly where their whereabouts were not disclosed to the University in violation of a valid regulation. To require more than was done in the instant case would in many cases render University officials powerless to command or rebuke the fanatic, the irritant, the malingerer, or the rabble rouser. By a violation the students simply frustrated the notice and hearing process. They circumvented the rights which they now seek to vindicate.

Additional Comments: This case was decided by the same Court which handed down the landmark decision of Dixon v. Alabama in 1961 in which guidelines were established in order to meet the standards of the Constitutional right of due process. Since this Court is only one step below the United States Supreme Court, its findings will have great precedence.

C. Right to Counsel

Barker v. Hardway, 283 F. Supp. 228. United States District Court, S. D. West Virginia, Bluefield Division. April, 1968.

Facts: Students at Bluefield State College participated in a demonstration at half time of a football game to protest the alleged racially discriminatory practices of the college administration and for the alleged denial of First Amendment rights. After the game resumed, the student demonstrators moved into the stands and by abusive and disorderly acts and conduct deprived the college President and others their right to see and to enjoy the game. Police protection was necessary for the President and others as the demonstrators took to throwing rocks and bottles and other riotous actions. The leaders of the demonstration were suspended from the college. Six of the suspended students refused to proceed with an appeal hearing because they were not allowed to be represented by legal counsel.

Issue: Does the Constitutional right of due process include the right to counsel in civil matters such as student disciplinary proceedings?

Answer: No.

Reasoning of the Court: College officials have an inherent general power to maintain order and exclude those who are detrimental to the student body and the well-being of the institution, so long as they exercise sound discretion and do not act arbitrarily or capriciously. The acts and conduct of the students at the football stadium far exceeded the bounds of a peaceful

demonstration or protest for the correction of grievances. The college administrators did not abuse their discretion in this case and therefore the judiciary must exercise restraint in questioning their wisdom. While it is true that recent Supreme Court decisions have expanded the Sixth Amendment's guarantee of right to counsel in criminal and semi-criminal cases, they have no application to matters purely of a civil nature. There has been no decision by the Supreme Court or any other court expressly extending the right of counsel to a student in a school disciplinary hearing.

Additional Comments: The Court in addition to discussing the points of law in the instant case observed that, in essence, the real issue involves a conflict between students and college administrators for supremacy in the field of school policy and school administration, and on this issue the welfare of other students, of the institution itself and of society generally, dictates that the truculent students must not prevail.

French v. Bashful, 303 F. Supp. 1333. United States District Court, E.D. Louisiana, New Orleans Division. September, 1969.

Facts: Students at Southern University in New Orleans participated in the forcible occupation of offices and sections of the administration buildings of the University. The University allowed the prosecution of the students before the discipline committee to be conducted by a senior law student who later became a member of the bar. The students were not permitted to be represented by their retained attorneys and therefore claimed that they were denied their constitutional rights.

Issue: Must a student at a state supported university be allowed right to his retained counsel at disciplinary proceedings when the university proceeds through counsel?

Answer: Yes.

Reasoning of the Court: The students in this case were at a great disadvantage by virture of the University selecting one who was well versed in legal proceedings to prosecute the cases. "In spite of the valuable assistance to a defendant in a university disciplinary proceeding, it may well be that in many cases the student will not be at such a disadvantage so as to require the assistance of counsel. But here there is more reason for counsel than in most cases."

Additional Comments: Student disciplinary proceedings have not been held to be criminal proceedings and therefore there is no general right to counsel. The Court distinguished this case due to the unusual circumstances under which the students were prosecuted. An additional infirmity was the failure of the disciplinary committee to put its findings into a report open to the students' inspection. The Court also stated that the

university's regulation requiring of students "responsible social conduct that shall reflect credit upon the university" was not overly broad under the circumstances of this case. Still another point made was that student disciplinary proceedings which do not involve expulsion or suspension but which only deal with lesser penalties, such as loss of certain social privileges, do not require protection by the same procedural safeguards as are necessary in expulsion or suspension proceedings.

D. Off-Campus Judicial Proceedings

Due v. Florida Agricultural and Mechanical University, 233 F. Supp. 396. United States District Court, N.D. Florida. November, 1963.

Facts: Students at Florida A & M were convicted of contempt of court charges. Rules published in the student handbook state that disciplinary action will be taken against students for misconduct if they are convicted by county or other similar officials. The students convicted for contempt were summoned to the disciplinary committee during normal hours. The students were read the charges against them when they denied having received written notice. Each student was given an opportunity to defend his actions. The students were suspended and notified of the appeal procedure.

Issue: Can a state-supported university discipline a student based solely on that student's conviction of criminal and/or civil law?

Answer: Yes.

Reasoning of the Court: "The basis of the suspension on this clearly-stated charge is supported fully by evidence. The disciplinary committee was not bound to suspend but clearly had the authority to do so after notice and hearing." Conviction of contempt charges can be equated with misconduct.

Furutani v. Ewigleben, 297 F. Supp. 1163. United States District Court, N.D. California. March, 1969.

Facts: Students at San Mateo College were charged with unlawful actions during one or more campus demonstrations and were suspended pending disposition of such charges. Thereafter, based upon the same actions, a variety of criminal charges were brought against the students in the California state courts. Hearings on the expulsion proceedings were not set immediately although there exists a procedure by which the students can obtain prompt hearings. The students asked the Federal Court for an order postponing any expulsion hearings until after the criminal trials and requiring the college to reinstate them pending completion of all proceedings. The primary claim of the students was that they may be forced to testify to avoid expulsion and that this testimony might be used against them in the subsequent criminal trials.

Issue: Must college officials allow students charged with unlawful actions on campus to remain in school and postpone any expulsion hearings pending completion of state criminal proceedings if the students express a fear of loss of the Fifth Amendment's self-incriminating rights in the proceedings?

Answer: No.

Reasoning of the Court: There has been no showing of actual or prospective unlawfulness in the disciplinary proceedings. These proceedings pose no threat to Fifth Amendment rights since the United States Supreme Court has protected these rights in other cases involving state investigations. "College authorities should be free to enforce fair and reasonable disciplinary regulations necessary to the orderly functioning of the educational institution. Otherwise, the campus marketplace for competition in ideas can all too readily be monopolized by ruthless minorities or ruthless majorities determined to have their way regardless of others."

Additional Comments: The Court in this case relied on the United States Supreme Court decision in Garrity v. New Jersey (385 U.S. 493). That decision involved policemen being compelled to testify in order to keep their jobs. Garrity has now been altered somewhat later by Supreme Court decisions and probably should not be relied upon as ruling law in this area, especially so when college students are involved.

E. Freedom of Speech, Expression and Assembly

Steier v. New York State Education Commission, 271 F. 2d. 13. United States Court of Appeals. Second Circuit. September, 1959.

Facts: The student involved wrote letters to the President of Brooklyn College protesting administration domination of student organizations. These letters were bitter and intemperate. The student was then suspended for the remainder of the term. In the fall term he was readmitted on probation subject to good conduct and non-participation as an officer in any organized student organization. During the fall term the student wrote an article which was published in the school paper claiming his probation was caused by discriminative and vindictive policies of the College administrators. Subsequently the student was suspended for a second time for "continued disregard of the rules and regulations." The District Court denied the student's request for relief and he appealed.

Issue: Was freedom of speech denied to a student who, having been on probation, was suspended for "continued disregard of the rules and regulations" after publishing a newspaper article containing charges against college administrators?

Answer: No.

Reasoning of the Court: "By the distribution of literature to the faculty and student body of the College, containing charges against the administration, faculty and its committees, plaintiff's actions were, to say the least, disruptive and an interference with the atmosphere which should prevail in an institution of higher education." "As to plaintiff's right of free speech, it has not been impaired. He may still speak and write as he wishes subject to the law of libel and slander, the clear and present danger doctrine, and other restraints imposed upon every individual."

Hammond v. South Carolina State College, 272 F. Supp. 947. United States District Court, D. South Carolina. August, 1967.

Facts: A rule in the student handbook promulgated by college authorities stated that students could not, "celebrate, parade, or demonstrate on the campus without the approval of the Office of the President." Many of the students in attendance at the College gathered on the campus to protest some of the school's practices. Several of these students were suspended for violating the rule published in the student handbook.

Issue: Is a rule which prohibits "parades, celebrations, and demonstrations" without prior approval of college officials a violation of the First Amendment right to freedom of assembly?

Answer: Yes.

Reasoning of the Court: The rule prohibiting "parades, celebrations, and demonstrations" without prior approval of college officials is a prior restraint upon First Amendment rights, unlawful, and must be struck down as being "incompatible with the guarantees of the First Amendment." "The suspension of these students was unlawful and cannot be given effect." The Court pointed out, however, that college authorities could discipline the students for other violations and lack of deportment.

Dickey v. Alabama State Board of Education, 273 F. Supp. 613. United States District Court, M.D. Alabama N.D. September, 1967.

Facts: The student editor of a state-operated college newspaper was denied permission by the faculty advisor to publish an editorial on the grounds that a college rule prohibited publishing editorials which were critical of the Governor of the State of Alabama or the Alabama Legislature. The faculty advisor furnished a substitute article entitled, "Raising Dogs in North Carolina" to be published in place of the proposed editorial. The editor, against the instructions of the faculty advisor and the president of the college published "A Lament for Dr. Rose" as a title for his editorial and in the space to be occupied by the editorial had printed the word "Censored." The editor was suspended for "willful and deliberate insubordination."

Issue: Does a rule which prohibits editorials criticizing state officials violate the First Amendment?

Answer: Yes.

Reasoning of the Court: There was no legal obligation on college officials to establish a school newspaper. Once the paper has been established and the editor selected, the College may not, without violating the editor's First Amendment rights to freedom of speech, suspend or expel the editor for conduct as is reflected in this case. "The imposition of such a restraint as here sought to be imposed upon Dickey and other students at Troy State College violates the basic principles of academic and political expression as guaranteed by our Constitution."

Jones v. State Board of Education of and for the State of Tennessee, 279 F. Supp. 190. United States District Court, M.D. Tennessee. January, 1968.

Facts: Students at a state-supported institution were involved in demonstrations; the writing, printing, and distribution of literature which was disruptive, and making disrespectful and abusive statements to University officials. After notice and hearing the students were suspended. The students alleged in this action that they were suspended to discourage or punish them in the exercise of their freedom of speech.

Issue: Does a college or University, in suspending students for distributing disruptive literature and making disrespectful and abusive statements to college officials, violate a student's First Amendment rights?

Answer: No.

Reasoning of the Court: "While the plaintiffs contend that there were no demonstrations or picketing, the facts compel the conclusion that there was other conduct of the plaintiffs disrupting and undermining University proceedings." The record indicates that the University acted to control and regulate conduct which obstructed the educational functions of the school and not to suppress political views. The First Amendment rights of these students were not violated by their suspension.

Buttny v. Smiley, 281 F. Supp. 280. United States District Court, D. Colorado. February, 1968.

Facts: Several students at the University of Colorado, a public institution, physically blocked the entrance to the Placement Service on campus. This activity was a protest against the United States Central Intelligence Agency which was recruiting. Students who had interviews scheduled and others were deprived of entrance to the Placement Service. When asked by University

officials to cease this activity the students refused to do so. After notice, hearing and an appeal the students were suspended either indefinitely or for shorter terms.

Issue: Are a student's First Amendment rights violated if he is suspended for blocking an entrance to a college or university building when that activity is an expression of protest and dissent?

Answer: No.

Reasoning of the Court: There has been no "chilling" effect on First Amendment rights by the University in suspending students who blocked the access to University buildings. The First Amendment right to free speech does not provide the right to prevent lawful access to campus facilities. The students were disciplined for what they did and not for what they said.

Zanders v. Louisiana State Board of Education, 281 F. Supp. 747. United States District Court, W.D. Louisiana. March, 1968.

Facts: Students at publically supported Grambling College physically blocked all entrances to the Administration Building to protest the College's emphasis of athletics. After presenting the President of Grambling with a list of demands and meeting with him to discuss the issues, the students declared that the Administration Building would not be reopened until action was taken on their demands. The students also blocked entrance to several other buildings on campus effectively paralyzing the operation of the College. Several students were expelled without notice or hearing and they appealed to the Court. The Court ordered the College to grant notice and hearing which subsequently was provided. All students were again expelled after the hearings concluded. An appeal to the State Board of Education was granted and that body upheld the action of the College.

Issue: Is the physical blocking of entrances to buildings, thus substantially disrupting the operation of a college or university, protected by the Federal Constitution when such action is an expression of dissent?

Answer: No.

Reasoning of the Court: Taking possession, physically and by force of numbers, of the College's property, thus effectively paralyzing the operation of this public enterprise, is not a protected activity under the First Amendment. The expulsion was based upon the illegal conduct of the students and not because of their criticisms of the College Administration. State college officials are not relegated to dismissal of an entire student body or a large portion thereof in order to stop illegal activity and restore order on the campus, especially when the instigators or leaders of the activity can be definitely identified and removed.

Evers v. Birdsong, 287 F. Supp. 900. United States District Court, S. D. Mississippi, W. D. July, 1968.

Facts: To protest alleged grievances concerning the operation of Alcorn A & M College, civil rights leader Charles Evers and others led and counseled repeated marches and demonstrations on the campus which resulted in a series of riotous incidents, including injuries and destruction of school buildings and equipment. State officials sought to permanently enjoin Evers and his associates from further activities of these kinds. Evers and his associates alleged that they were being denied their constitutional right to "peacefully assemble and petition" the College President regarding redress of grievances concerning the operation of the College.

Issue: Does any person have the constitutional right to march or demonstrate at will on a state college or university campus?

Answer: No.

Reasoning of the Court: "This is another case where protected rights of peaceful assembly and for redress of grievances must be weighed against the administrative prerogatives of school officials and the duty of law enforcement personnel to maintain order, and protect public property." "School campuses are not public in the sense of streets, courthouses, and public parks, open for expressions of free speech by the public. A college campus . . . is vulnerable to the attentions occasioned by even the most orderly parade or assembly." It makes no difference as to the cause - whether it be just or holy, there is nothing in the Constitution or law for lawlessness, violence or destruction of property under the guise of petition and protest. "The right of free speech, assembly or protest has never been so judicially enlarged as to permit disruption of a school and destruction of its property. It would seem more logical to assume that it is the duty of school officials to protect students from such disruptions and for law officials of the state to protect its property from destruction."

Additional Comments: This case illustrates the fact that citizens do have the constitutional right of "peaceful assembly and petition" so long as they are truly "peaceful." However, there is no constitutional right to continue freely to assemble on a campus to again and again voice alleged protests in marching, clapping, and singing without restraint. State officials also sought damages amounting to $15,709 for the destruction of buildings and equipment. The Court stated that it would be inclined to allow the claim but that in the absence of evidence positively identifying those who caused the damage would reluctantly forego that assessment.

People v. Harrison, 163 N.W. 2d. 699. Court of Appeals of Michigan. August, 1968.

Facts: The placement office of Michigan State University sponsored a "career carnival" in the student union building. Students entered the building with signs and literature which expressed opposition to the military activities of the United States in Vietnam and stationed themselves in the vicinity of the Marine Corps booth. Other students and guests found it most difficult to pass by and to visit the Marine Corps booth and other nearby booths. The director of the placement office read a statement to the students concerning the Michigan trespass-after-warning statute and asked that they leave. The students refused, were ejected by the police, and charged with violation of the trespass-after-warning statute. Upon conviction in the lower state courts the students appealed to the Court of Appeals of Michigan.

Issue: Does partially obstructing the free access of others by demonstrating students constitute sufficient evidence to convict a student of such a statute as the trespass-after-warning law in effect in Michigan?

Answer: No.

Reasoning of the Court: The protesting students did not remain completely stationary, although they were somewhat less mobile than other persons attending the "career carnival." "This may indeed have aggravated the congestion that naturally resulted from the presence of such a large number of carnival patrons, but it is not enough, of itself, to constitute a violation of the ordinance and to bring into operation the penal consequences thereof. The 'free and normal use of university buildings and facilities' in the context of this 'career carnival' must surely encompass a significant degree of congestion in the carnival area." The burden was upon the University to establish a violation of the ordinance. This the University failed to do.

Additional Comments: The federal courts have upheld the right of students to demonstrate peacefully on a state university campus so long as they do not obstruct other students free access. Just what constitutes "obstruction" must be determined from the facts in each individual case.

Esteban v. Central Missouri State College, 290 F. Supp. 622. United States District Court, W.D. Missouri, W.D. September, 1968.

Facts: Students at Central Missouri State College participated in a mass gathering which involved the illegal blocking of a public highway and street, and the destruction of school property. Pursuant to a college regulation subjecting a student to possible dismissal for participating in mass gatherings which might be considered as unruly or unlawful, two students were suspended. These students charged that the regulation under which they were suspended violated due process.

Issue: Does a state supported college regulation subjecting a student to possible dismissal for participating in mass gatherings which might be considered as unruly or unlawful violate the First Amendment's guarantee of freedom of speech and assembly?

Answer: No.

Reasoning of the Court: "Certainly, as reasonably interpreted and applied by the college such a prohibition as is contained in the challenged regulation is not a prohibition of a student demonstration that is peaceful in nature, according lawful respect for the rights and property of others." "Certainly the regulation concerning mass demonstrations, reasonably interpreted, and as interpreted and applied by the college in the instant case to a participant in student mass demonstrations involving unlawful conduct such as the illegal blocking of a public highway and street, and the destruction of school property, is relevant to a lawful mission of the educational institution. Neither the First Amendment or any other provision of the Constitution prohibits an educational institution from protecting itself against conduct that would damage or destroy it or its property in total or in part."

Additional Comments: The Court also stated that the challenged regulation was not overly broad and too vague to be the basis of disciplinary action. Also the standards established by the college may apply to student behavior on and off the campus when relevant to any lawful mission, process, or function of the institution. What is relevant, however, must be determined from the facts in each individual case.

Esteban v. Central Missouri State College, 415 F. 2d. 1077. United States Court of Appeals, Eighth Circuit. August, 1969.

Facts: Students at Central Missouri State College participated in a mass gathering which involved the illegal blocking of a public highway and street, and the destruction of school property. Pursuant to a college regulation subjecting a student to possible dismissal for participating in mass gatherings which might be considered as unruly or unlawful, two students were suspended. These students charged that the regulation under which they were suspended violated due process. This case is an appeal by the students of the earlier decision rendered in the United States District Court.

Issue: Does a state supported college regulation subjecting a student to possible dismissal for participating in mass gatherings which might be considered as unruly or unlawful violate the First Amendment's guarantee of freedom of speech and assembly?

Answer: No.

Reasoning of the Court: "Certainly, as reasonably interpreted and applied by the college such a prohibition as is contained in the challenged regulation is not a prohibition of a student demonstration that is peaceful in nature, according lawful respect for the rights and property of others." "Certainly the regulation concerning mass demonstrations, reasonably interpreted, and as interpreted and applied by the college in the instant case to a participant in student mass demonstrations involving unlawful conduct such as the illegal blocking of a public highway and street, and the destruction of school property, is relevant to a lawful mission of the educational institution." "It is obvious that where there is actual or potentially disruptive conduct, or disorder or disturbance by the petitioners, or interference with the work of the school or of the rights of other students, or threats or acts of violence on the school premises, or substantial disorder, then reasonable action by school authorities is constitutionally permitted. There must, however, be more than mere fear and apprehension of possible disturbance."

Additional Comments: The Court also stated that the challenged regulation was not overly broad and too vague to be the basis of disciplinary action and that there is little basically or constitutionally wrong with flexibility and reasonable breadth, rather than meticulous specificity, in college regulations relating to conduct. This case upholds the Federal District Court's ruling thus, giving greater precedence to this decision.

Scoggin v. Lincoln University, 291 F. Supp. 161. United States District Court, W.D. Missouri, Central Division. September, 1968.

Facts: Students at Lincoln University planned a demonstration to protest the quality and cost of the food in the cafeteria. University officials suspected that a demonstration would occur and expressed the hope that if such should be the case that it be orderly, peaceful, and respectful of the rights of others and of University property. The demonstration turned into a disturbance which included the dropping of trays and food, the upturning of tables and chairs, and the throwing of dishes and glassware. Approximately $1,500 damage was done to property of the University. Two students were subsequently suspended for their "planning and/or participating in a demonstration which led to destruction of University property."

Issue: Does the disciplining of students for planning and/or participating in a demonstration which subsequently becomes violent and destructive violate due process?

Answer: Yes.

Reasoning of the Court: It is obvious that no student can properly be disciplined for planning, participating, or urging others to participate in the sort of demonstration contemplated by the University officials. The fact that the demonstration became violent and destructive does not on its face condemn the students. Additional substantive evidence must be present in order to justify disciplinary action by University officials.

Additional Comments: In this case the Court stated that there is no place for violence in a democratic society dedicated to liberty under law, and that the right of peaceful protest by students does not mean that everyone with opinions or beliefs to express may do so at any time and at any place. The students could have been lawfully suspended had there been substantial evidence that they had personally destroyed University property.

Eisen v. Regents of University of California, 75 Cal. Rptr. 45. California Court of Appeal. February, 1969.

Facts: The University of California adopted a policy of making public the registered names of the officers and stated purposes of all student organizations. An officer of one of the registered student organizations protested that such disclosure violated rights protected by the First Amendment of the United States Constitution.

Issue: Does public disclosure of the names of the officers and the stated purposes of a registered student organization constitute an indirect infringement of Constitutional rights?

Answer: No.

Reasoning of the Court: ". . . just as the People of the state have a right to know how their elected officials conduct the public business, they are entitled to know the identity and responsible officers of organizations that are granted the privileges of becoming campus organizations and using the public property and facilities of the University." The compelling interest of the public in being able to ascertain this information outweighs any minimal infringement of First Amendment rights.

Additional Comments: The United States Supreme Court has ruled that in certain circumstances First Amendment rights would indeed be infringed by public disclosure. However, this has not been extended to the disclosure of the names of the officers and the stated purposes of the organization when that organization is connected in any way with the State.

State v. Zwicker, 164 N.W. 2d. 512. Supreme Court of Wisconsin. February, 1969.

Facts: Students at the University of Wisconsin "demonstrated" against the interviewing of students by a chemical manufacturer. The students blocked doors and used other means to prevent the interviews. University rules allowing for orderly protests were violated. After much violent and profane conduct on the part of the students, they were arrested and charged with violating Wisconsin's disorderly conduct statute. The students were convicted after jury trials, and appealed to the Supreme Court of Wisconsin on the grounds that the statute was unconstitutional.

Issue: Does a statute providing that whoever in a public or private place engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance shall be guilty of disorderly conduct violate the United States Constitution?

Answer: No.

Reasoning of the Court: The statute in question does not punish a person for conduct which might possibly offend some hypercritical individual. The design of the statute is to proscribe substantial instructions which offend the normal sensibilities of average persons or which constitute significantly abusive or disturbing demeanor in the eyes of reasonable persons. "Constitutionally protected rights, such as freedom of speech and peaceable assembly, are not the be all and end all. They are not an absolute touchstone. The United States Constitution is not unmindful of other equally important interests such as public order. To recognize the rights of freedom of speech and peaceable assembly as absolutes would be to recognize the rule of force; the rights of other individuals and of the public would vanish."

Additional Comments: It should be noted that this case was heard in a state court. It will be interesting to see if it is appealed to the United States Supreme Court and if that Court will agree to hear the case.

Tinker v. Des Moines Independent Community School District, 393 U.S. 503. United States Supreme Court. February, 1969.

Facts: Students wore black armbands to the public junior and senior high schools in Des Moines, Iowa signifying protest against the Vietnam war. The students were sent home and suspended until they would return without the armbands. This action was in accord with an earlier regulation adopted by the Des Moines public school principals. The Federal District Court upheld the principals' action as reasonable in order to prevent disruption of school discipline. The Circuit Court of Appeals affirmed that decision.

Issue: Does a public school prohibition of symbolic protests by students violate the First and Fourteenth Amendments?

Answer: Yes.

Reasoning of the Court: The wearing of such armbands is closely "akin to pure speech" and therefore protected by the Constitution. There is no evidence whatever of interference, actual or nascent, with the school's work or of collision with the rights of other students to be secure and let alone. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views.

Additional Comments: Although this case was taken to the United States Supreme Court on a petition for certiorari urging that the First and Fourteenth Amendments protect the right of school pupils to express their political views all the way "from kindergarten through high school," it does have relevance to higher education as well.

It is most interesting to note Justice Black's dissenting opinion since he has for so long been regarded as the most staunch defender of free speech. After stating that the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw it would, that is, took the students' minds off their classwork (although they did not actually "disrupt" the school), he stated: "It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases and when he pleases." "One does not need to be a prophet or the son of a prophet to know that after the Court's holding today that some students . . . in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins." He concluded that the decision "wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students." "I wish, therefore, wholly to disclaim any purpose on my part, to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the public school system to public school students."

O'Leary v. Commonwealth of Kentucky, 441 S.W. 2d. 150. Court of Appeals of Kentucky. May, 1969.

Facts: Students at the University of Kentucky physically blocked the entrance to two rooms in the Placement Service by the Defense Intelligence Agency. After refusing to leave, at the request of the Dean of Students, the students were warned that they would be arrested and charged with "breach of peace." The students did not leave and were arrested and physically removed by police officers. The blockade of the Placement Service rooms denied the normal continued use of the Placement Service.

Issue: Did the students' activity constitute a breach of peace?

Answer: Yes.

Reasoning of the Court: As regards the exercise of free speech and the right of assembly, there is a difference between public and private places, and in this regard the property of a college or university is no different from private property. "That the institution is financed with tax money is no reason why its governing body should not have the same dominion and control over it as would a private owner." "The privilege of an enrolled student to use and occupy the property of a school is and should be subject to the will of its governing authorities. If he is told to stay out of a particular room, building, or familiar trysting place, he enters it as a trespasser."

Close v. Lederle, 303 F. Supp. 1109. United States District Court, D. Massachusetts. September, 1969.

Facts: An art instructor at the University of Massachusetts who had been invited to display his paintings had them removed from a public exhibit by University officials on the grounds that they were objectionable and embarrassing to the University. The instructor claimed that this action violated his freedom of expression rights.

Issue: Does removal of a state university instructor's art work from a public exhibition on the grounds of "inappropriateness," when there is an absence of its interference with some legitimate interest of the university, violate the constitutional protection of freedom of expression?

Answer: Yes.

Reasoning of the Court: Having chosen to permit and even to encourage expression in the form of exhibition of art, the university cannot by arbitrary or discriminatory action bar the instructor from exhibiting his work for the period to which under the existing procedure he had become entitled to do so. "At most the exhibition was a source of some annoyance or embarrassment, but this is far from providing adequate justification for infringement of the constitutional right to free expression."

Additional Comments: The key to this case is arbitrary action by administrators when no substantial reason exists for such action. The court did not hold that under no circumstances could such exhibits be removed. This case simply exemplifies the sensitivity of courts to First Amendment freedoms.

Norton v. Discipline Committee of East Tennessee State University, 419 F. 2d. 195. United States Court of Appeals, Sixth Circuit. November, 1969.

Facts: Several students at a state university distributed literature on campus which urged students to stand up and fight and which called university administrators despots and problem children to be reprimanded by students. The students who distributed this literature were given notice and hearing and subsequently suspended. The students brought action in the United States District Court alleging that their constitutional rights of free speech and expression were violated. Their request to prohibit their suspension was denied by the District Court and they appealed.

Issue: Is the distribution of literature which is calculated to cause disruption of school activities and bring about ridicule and contempt for school authorities protected by the First Amendment of the United States Constitution?

Answer: No.

Reasoning of the Court: The literature was "an open exhortation to the students to engage in disorderly and destructive activities." "This vicious attack on the administration was calculated to subject it to ridicule and contempt and to damage the reputation of the University." Suspension from the University for the distribution of such literature was not improper. The court also stated that, "It is not required that the college authorities delay action against the inciters until after the riot has started and buildings have been taken over and damaged. The college authorities had the right to nip such action in the bud and prevent it in its inception." It is not necessary for a college to have specific regulations providing for disciplinary action for the circulation of false and inflammatory literature.

Additional Comments: The Court also upheld the inherent authority of the University to maintain order and discipline its students. The Court could find no good analogy between criminal procedure and student discipline.

Saunders v. Virginia Polytechnic Institute, 417 F. 2d. 1127. United States Court of Appeals, Fourth Circuit. November, 1969.

Facts: A student who had dropped out of V.P.I. during the Spring and had received notification of acceptance for readmission in the Fall participated in a peaceful and orderly demonstration on the V.P.I. campus. Subsequently the student was informed that he was being denied readmission solely on the ground that he had violated school policy by taking part in the demonstration. No one who participated in the demonstration was arrested and none of the other students who participated were disciplined. The United States District Court denied relief to the student and he appealed claiming that the denial of readmission violated his right to free speech.

Issue: Does a denial of readmission to a state-supported institution based solely on the gound that a student participated in peaceful and orderly demonstrations violate the student's constitutional rights?

Answer: Yes.

Reasoning of the Court: Saunders was as much a "matriculated student" as any other student who took part in the demonstration and went undisciplined. "We reject V.P.I.'s arguement that it must restrict participation in campus demonstrations to 'matriculated' students for the reason that the conduct of persons who are not members of its academic community is not subject to its control because its disciplinary procedures cannot be used to deter the possibility of disruption." ". . . the attempted denial of readmission to Saunders shows that in a proper case V.P.I. is not powerless."

Additional Comments: The Court also stated that a state university is powerless to restrict or deny a student's freedom to express dissent on campus as long as it is peaceful and not obstructive or disruptive.

Lee v. Board of Regents of State Colleges, 306 F. Supp. 1097. United States District Court, W.D. Wisconsin. December, 1969.

Facts: The campus newspaper of a state university refused on several occasions to accept editorial advertisements. The editorial advertisements concerned various political and social issues and were refused on the basis of a university policy.

Issue: If a campus newspaper accepts commercial and public service advertisements that do not attack an institution, group, person or product, can it constitutionally refuse to accept editorial advertisements?

Answer: No.

Reasoning of the Court: The rejection of editorial advertisements, while accepting commercial and public service advertisements that do not attack persons, groups, institutions or products, constitutes an impermissible form of censorship. The restrictive advertising policy enforced under color of state law is a denial of free speech and expression in violation of the First and Fourteenth Amendments.

Siegel v. Regents of the University of California, 308 F. Supp. 832. United States District Court, N.D. California. January, 1970.

Facts: The president-elect of the Associated Students (the student government organization) at the University of California at Berkeley spoke to a group of students on campus exhorting them to make it costly for the University to erect a fence around "Peoples Park." "Peoples Park" is owned by the University. The president-elect, after notice and hearing, was placed on disciplinary probation. As part of his probation, the president-elect was prohibited from participating in extracurricular activities which included a prohibition against occupying the office of the President of the Associated Students.

Issue: Is speech which exhorts others to unlawful acts protected by constitutional guarantees?

Answer: No.

Reasoning of the Court: "Utterances in a context of violence, involving a clear and present danger, can lose its significance as an appeal to reason and become part of an instrument of force and as such unprotected by the Constitution." Nothing in the University's regulations can fairly be said to have a "chilling effect" upon the student's exercise of First Amendment rights to free speech because of vagueness or overbreadth. "Under the circumstances shown by the record that statement transcends mere expression of opinion and becomes conduct - a distinct, affirmative verbal act - overt conduct for which plaintiff could be properly called to account under the regulations whatever might be his claim as to his subjective purpose and intent."

Antonelli v. Hammond, 308 F. Supp. 1329. United States District Court, D. Massachusetts. February, 1970.

Facts: The editor of a campus newspaper at a state-supported institution submitted to the printer for publication an issue of the paper which included a reprint of an article by Eldridge Cleaver entitled "Black Moochie." The President of the College stated that he would not permit the allocation of student activity funds to be used to print the newspaper unless a faculty advisory group approved all matters to be included in the paper prior to its being printed.

Issue: Can a state institution, by witholding funds derived from student activity fees, require the prior submission of material to be published to an advisory board in order that the board may decide if the material is obscene or complies with "responsible freedom of the press?"

Answer: No.

Reasoning of the Court: Any infringement of individual constitutional rights must be adequately related to the schools educational purpose. "The university setting of college-age students being exposed to a wide range of intellectual experience creates a relatively mature marketplace for the interchange of ideas so that the free speech clause of the First Amendment, with its underlying assumptions that there is positive social value in an open forum, seems particularly appropriate." "Having fostered a campus newspaper, the state may not impose arbitrary restrictions on the matter to be communicated." The Court also held that, "The state is not necessarily the unrestricted master of what it creates and fosters." The college must show overriding reasons why the paper should be more restricted than generally permissible under the First Amendment - this was not in evidence.

F. Speaker Bans

Dickson v. Sitterson, 280 F. Supp. 486. United States District Court, M.D. North Carolina. February, 1968.

Facts: Several recognized campus organizations invited Frank Wilkinson, Executive Director of the National Committee to Abolish the House Un-American Activities Committee and Herbert Aptheker, Director of the American Institute for Marxist Studies to speak on the campus of the University of North Carolina. Both men were denied permission to speak on campus pursuant to a statute enacted by the North Carolina General Assembly. The statute known as the "Speaker Ban" stated in essence that the Board of Trustees of each state college or university publish regulations governing the use of institutional facilities for speaking purposes by any person who:

> "(1) Is a known member of the Communist Party;
>
> (2) Is known to advocate the overthrow of the Constitution of the United States or the State of North Carolina;
>
> (3) Has pleaded the Fifth Amendment of the Constitution of the United States in refusing to answer any questions, with respect to Communist or subversive connections, or activities, before any duly constituted legislative committee, any judicial tribunal, or any executive or administrative board of the United States or any state."

Wilkinson had at one time claimed the Fifth Amendment before the House Un-American Activities Committee, and Aptheker was a professed member of the Communist Party.

Issue: Does this statute violate the First and Fourteenth Amendments of the United States Constitution?

Answer: Yes.

Reasoning of the Court: "No one has an absolute right to speak on a college or university campus, but once such institutions opens its doors to visiting speakers it must do so under principles that are constitutionally valid." "It is firmly established that a statute, 'which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application . . . violates the due process clause of the Fourteenth Amendment because of vagueness'."

Snyder v. Board of Trustees of University of Illinois, 286 F. Supp. 927. United States District Court, N.D. Illinois, E.D. July, 1968.

Facts: The Board of Trustees of the University of Illinois refused permission for the use of university facilities to a student organization known as "Illini Humanists" for the purpose of inviting one Louis Diskin, a member of the Communist party of the United States, to speak. The sole reason for refusal was based upon an Illinois Statute, known as the "Clabaugh Act," which provided as follows:

> "No trustee, official, instructor, or other employee of the University of Illinois shall extend to any subversive, seditious, and un-American organization, or to its representatives, the use of any facilities of the University for the purpose of carrying on, advertising or publicizing the activities of such organization."

The students were joined by several faculty members in seeking an injunction against enforcement of the statute on the grounds that the legislation violated the First Amendment of the United States Constitution made applicable to the states by the Fourteenth Amendment.

Issue: Does a state statute drawn in such a manner as the Clabaugh Act regulating the use of state owned university facilities violate due process?

Answer: Yes.

Reasoning of the Court: The Clabaugh Act both on its face and as applied in this case is a denial of due process because it lacks the precision of language required for a statute regulating an area so closely intertwined with First Amendment liberties; because it is an unjustifiable prior restraint to speech; and because it lacks the procedural safeguards required for a form of regulation amounting to censorship. Disregarding the special cases of obscenity and libel, speech may be suppressed only when it presents a "clear and present danger" that substantive evil will result. "In each case, courts must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." "A statute purporting to regulate expression may not be so broad in its sweep as to hazard the loss or impairment of First Amentment freedoms by appearing to cover speech which may not constitutionally be regulated. Nor does it matter that the person challenging the validity of the statute might be subject to regulation under one more narrowly drafted."

Additional Comments: The Court refused to state that no statute could be drawn in this area as only the statute in question was held unconstitutional. The Court rightfully pointed out that the person challenging the validity of the statute in the instant case might be subject to regulation under one more narrowly drafted. This is also the case with loyalty oath statutes. Therefore, statutes such as the Clabaugh Act will be continually judged upon their provisions in each individual case.

Brooks v. Auburn University, 296 F. Supp. 188. United States District Court, M.D. Alabama, E.D. February, 1969.

Facts: Reverend William Sloan Coffin of Yale University was invited to speak at Auburn University by a student group. The President of Auburn University, in the absence of a previously formulated rule or state statute regulating guest speakers on the campus, denied permission for Reverend Coffin to speak basing that decision on his belief that Reverend Coffin might advocate breaking the law and because he was a convicted felon.

Issue: May a speaker be denied the opportunity to speak based upon the belief that he may break the law or that he is a convicted felon?

Answer: No.

Reasoning of the Court: In this case we have direct regulation of speech, regulations which on their face restrict the nature and source--both the medium and the message--to which the students and faculty may be exposed. In plain words these regulations must fall because they constitute blatant political censorship. "The State of Alabama cannot, through its President of Auburn University, regulate the content of the ideas students may hear. To do so is illegal and thus unconstitutional censorship in its rawest form. There is no relationship between a speaker's criminal conviction--especially one on appeal--and the value of his words to the listener." ". . . speech may not be restrained in advance except when there is a clear and unmistakable determination that the speaker will violate the law in the course of the speech. Such a determination can only be made if adequate procedures are adopted. No such determination was made here."

Additional Comments: The regulations set forth by President Philpott of Auburn University were similar to the "speaker ban" statutes which have been declared unconstitutional in several states. This case underscores the fact that it is most difficult to construct a constitutionally valid statute or regulation restricting speech.

Smith v. University of Tennessee, 300 F. Supp. 777. United States District Court, E.D. Tennessee, N.D. April, 1969.

Facts: The University of Tennessee had in effect guidelines for student invitations to speakers on campus. These guidelines appeared in the student handbook and required the following: that the speaker be competent and that the speaker's topic be relevant to the approved constitutional purposes of the inviting organization, that there be no reason to believe that the speaker intended to present personal defense against alleged misconduct or crime pending in court and that no reason exist to believe that the speaker would speak in a libelous, scurrilous, or defamatory manner or in violation of laws which prohibit incitement to riot

and conspiracy to overthrow the government by force, and that the invitation and its timing be in the best interests of the University. Invitations were extended to Dick Gregory (negro civil rights activist) and to Dr. Timothy Leary (advocate of the use of LSD). Officials refused to approve the invitations.

Issue: Do guidelines affecting speakers on campus, such as those stated at the University of Tennessee, violate the First Amendment protection of speech by reason of being too broad and vague?

Answer: Yes.

Reasoning of the Court: "Prior restraints on speech come to the courts with a heavy presumption against their constitutional validity." The guidelines are so broad that an administrator could, if he chose to do so, act as an unrestricted censor of the expression of ideas with which he does not agree. Proper standards are not set forth in the guidelines for making administrative judgments. Also, the guidelines vests in the administrative officials discretion to grant or withhold a permit upon criteria unrelated to proper regulation of school facilities.

Additional Comments: The United States Supreme Court in Tinker v. Des Moines Independent School District indicated that the area in which school officials may limit free speech is confined to speech that "which materially and substantially disrupt the work and discipline of the school." To construct a constitutionally valid regulation regarding speech is most difficult. These regulations will be continually judged upon their provisions in each individual case.

Stacy v. Williams, 306 F. Supp. 963. United States District Court, N.D. Mississippi, W.D. December, 1969.

Facts: The Board of Trustees of Institutions of Higher Learning of the State of Mississippi had formulated rules governing off-campus speakers. Several groups brought action in the United States District Court to declare these regulations unconstitutional. The Court declared the regulations unconstitutional and provided the Board an opportunity to propose new regulations consonant with the Court's rulings. The Board submitted newly drafted regulations. These new regulations were broad, vague and open to interpretation.

Issue: Are college or university regulations pertaining to off-campus speakers constitutional if they are broad, vague or open to various interpretations?

Answer: No.

Reasoning of the Court: ". . . whenever the policy is to allow outside speakers not connected with the university, it does not follow that the freedoms of speech and assembly of those persons on campus--students and faculty alike--may be exercised by anyone at any time or place and regardless of the circumstances or probable consequences of the event." The Court went on to say, however, that speaker regulations were by their very nature a prior restraint upon freedoms of speech and assembly and while prior restraint is not unconstitutional per se that in order to withstand constitutional attack the regulations must be narrowly drafted to prevent "clear and present danger."

Additional Comments: The importance of this decision lies in the guidelines formulated by the Court. These guidelines are presented here, for the benefit of administrators and others, exactly as they appeared in the text of the Court's Opinion.

UNIFORM REGULATIONS FOR OFF-CAMPUS SPEAKERS INVITED BY ORGANIZED STUDENT AND FACULTY GROUPS APPLICABLE TO ALL INSTITUTIONS OF HIGHER LEARNING WITHIN THE STATE OF MISSISSIPPI

The freedoms of speech and assembly guaranteed by the first and fourteenth amendments to the United States Constitution shall be enjoyed by the students and faculties of the several Institutions of Higher Learning of the State of Mississippi as respects the opportunity to hear off-campus, or outside, speakers on the various campuses. Free discussion of subjects of either controversial or noncontroversial nature shall not be curtailed.

However, as there is no absolute right to assemble or to make or hear a speech at any time or place regardless of the circumstances, content of speech, purpose of assembly, or probable consequences of such meeting or speech, the issuance of invitations to outside speakers shall be limited in the following particulars, but only in the manner set forth herein:

(1) A request to invite an outside speaker will be considered only when made by an organized student or faculty group, recognized by the head of the college or university;

(2) No invitation by such organized group shall issue to an outside speaker without prior written concurrence by the head of the institution, or such person or committee as may be designated by him (hereafter referred to as his authorized designee), for scheduling of speaker dates and assignment of campus facilities;

(3) Any speaker request shall be made in writing by an officer of the student or faculty organization desiring to sponsor the proposed speaker not later than ten calendar days prior to the date of the proposed speaking engagement. This request shall contain the name of the sponsoring organization

the proposed date, time and location of the meeting, the expected size of the audience and topic of speech. Any request not acted upon by the head of the institution, or his authorized designee, within four days after submission shall be deemed granted;

(4) A request made by a recognized organization may be denied only if the head of the institution, or his authorized designee, determines, after proper inquiry, that the proposed speech will constitute a clear and present danger to the institution's orderly operation by the speaker's advocacy[1] of such actions as:

1. The violent overthrow of the government of the United States, the State of Mississippi, or any political subdivision thereof; or
2. The willful damage or destruction, or seizure and subversion, of the institution's buildings or other property; or
3. The forcible disruption or impairment of, or interference with, the institution's regularly scheduled classes or other educational functions; or
4. The physical harm, coercion, intimidation, or other invasion of lawful rights, of the institution's officials, faculty members or students; or
5. Other campus disorder of a violent nature.

In determining the existence of a clear and present danger, the head of the institution, or his authorized designee, may consider all relevant factors, including whether such speaker has, within the past five years, incited violence resulting in the destruction of property at any state educational institution or has willfully caused the forcible disruption of regularly scheduled classes or other educational functions at any such institution.

(5) Where the request for an outside speaker is denied, any sponsoring organization thereby aggrieved shall, upon written application to the head of the institution, or his authorized designee, obtain a hearing within two days following the filing of its appeal before a Campus Review Committee, composed of three faculty members and two students of the institution, for a de nova consideration of the request. The Campus Review Committee shall have power to grant or deny the request; and its decision shall be

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[1]Advocacy, as described above, means preparing the group addressed for imminent action and steeling it to such action, as opposed to the abstract espousal of the moral propriety of a course of action by resort to force; and there must be not only advocacy to action but also a reasonable apprehension of imminent danger to the essential functions and purposes of the institution.

final, unless judicial review is sought as hereinafter provided. If such request is neither granted not denied within said two-day period, it shall be deemed granted, and the speaker's invitation shall issue. The three faculty members to serve on the Campus Review Committee shall be appointed at each institution for a one-year term beginning September 1 of each calendar year, and this appointment shall be made by the President of the Board of Trustees of the Institutions of Higher Learning. The two student members on the Campus Review Committee shall be the president and secretary of the student body of each institution, and they shall serve only as long as they hold those student offices.

Any sponsoring organization aggrieved by the action of the Campus Review Committee in denying the request may obtain judicial review thereof upon application to any court of competent jurisdiction, state or federal, by presenting its verified petition setting forth the grounds of complaint and giving adequate notice of such filing to the head of the institution. Upon a hearing to be conducted as soon as practicable, and at such time and place as the court may prescribe, the court shall either reverse or affirm the decision of the Campus Review Committee as may be proper under the law and facts.

(6) Where the request for an outside speaker is granted and the speaker accepts the invitation, the sponsoring organization shall inform the head of the institution, or his authorized designee, in writing immediately of such acceptance. The head of the institution, or his authorized designee, may, in his discretion, require that the meeting be chaired by a member of the administration or faculty, and he may further require a statement to be made at the meeting that the views presented are not necessarily those of the institution or of the sponsoring group. By his acceptance of the invitation to speak, the speaker shall assume full responsibility for any violation of law committed by him while he is on campus.

G. Search and Seizure

Moore v. Student Affairs Committee of Troy State University, 284 F. Supp. 725. United States District Court, M.D. Alabama, Northern Division. May, 1968.

Facts: A student in good standing at Troy State University resided in a dormitory on the campus. A search of his room in his presence, but without his permission, by the Dean of Men and two agents of the State of Alabama Health Department, Bureau of Primary Prevention, revealed a supply of marijuana. Following a hearing before the Student Affairs Committee, the student was indefinitely suspended from Troy State University. The student claimed that the admission in the University's hearing of the evidence obtained through a search of his dormitory room violated his Fourth Amendment rights prohibiting illegal search and seizure.

Issue: Does the Fourth Amendment prohibit college authorities from conducting searches of dormitory rooms if they have reasonable cause to believe that a student is using the room for a purpose which is illegal or would otherwise seriously interfere with campus discipline?

Answer: No.

Reasoning of the Court: "College students who reside in dormitories have a special relationship with the college involved." "The student is subject only to reasonable rules and regulations, but his rights must yield to the extent that they would interfere with the institution's fundamental duty to operate the school as an educational institution. A reasonable right of inspection is necessary to the institution's performance of that duty even though it may infringe on the outer boundaries of a dormitory student's Fourth Amendment rights."

Additional Comments: The standard of "reasonable cause to believe" will continue to be difficult to follow since what is "reasonable" must be determined from the facts in each individual case.

People v. Cohen, 292 N.Y.S. 2d. 706. District Court, Nassau County, First District. July, 1968.

Facts: Information previously obtained by college officials and an odor in the dormitory hallway prompted a search of a student's room. Two University officials and police officers entered the room unannounced and without a search warrent. The students who occupied the room were not present. A search of the room revealed a supply of marijuana. The student brought action to suppress the evidence on the basis that it was obtained by an illegal search.

Issue: Is a search of a dormitory room without the consent of the occupant or a warrent constitutional, if not incident to an arrest?

Answer: No.

Reasoning of the Court: "It seems self-evident that the dormitory room of a college student is not open for entry at all times for all purposes." "University students are adults. The dorm is a home and it must be inviolate against unlawful search and seizure. To suggest that a student who lives off campus in a boarding house is protected but that one who occupies a dormitory room waives his Constitutional liberties is at war with reason, logic and law." This case was not one in which a search was permitted by school officials in order to maintain discipline over young students. Even if implied consent were an issue in this case that consent is given to school authorities and not to police. Without a warrent or consent, a search can only be conducted if incident to a lawful arrest.

Additional Comments: The facts in this case are somewhat different from those in Moore, but it is interesting to note that Moore was not cited at all in the opinion rendered in the present case.

United States v. Coles, 302 F. Supp. United States District Court, D. Maine, N.D. June, 1969.

Facts: A supervisor at the Arcadia Civilian Conservation Center (a Job Corps Center) searched the suitcase of a "corpsman" and found a bag of marijuana. The search was conducted without a warrent and was not incident to an arrest. The "corpsman" indicated that he did not want to permit the supervisor to search his suitcase but felt that he had no choice.

Issue: Is a search conducted without a warrent and not incident to an arrest in violation of the Constitution when that search is conducted by someone charged with maintaining proper standards of conduct and discipline, and if that official has "reasonable cause to believe" those standards are being violated.

Answer: No.

Reasoning of the Court: "The Court . . . has concluded upon a broader ground that the search and seizure was reasonable and did not infringe defendent's Fourth Amendment rights. The Court has no doubt that the search of defendant's suitcase was a constitutional exercise of Anderson's authority, as an Administrative Officer of Arcadia Center, to maintain proper standards of conduct and discipline at the Center." The object of the search was to determine if unlawful items were being brought into the Center. "Quite plainly the investigation was conducted solely for the purpose of ensuring proper moral and disciplinary conditions at the Center, an obligation mandated by federal statute." The Court also took note of the Moore case which it stated was "closely analogous" to the present case.

Additional Comments: Although a job corps center is not a college or university, it is engaged in educational activities involving college age youth, and the responsible officials are charged with responsibilities similar to those of higher education officials.

H. Interim Suspension

Marzette v. McPhee, 294 F. Supp. 562. United States District Court, W.D. Wisconsin. December, 1968.

Facts: Students at Wisconsin State University-Oshkosh entered administrative offices and while holding the President and Vice-President "prisoners" did great physical damage to the files, equipment, and the building itself. The students were subsequently suspended and given ten days in which to request a hearing. Failure to request a hearing deemed a waiver of any hearing and expulsion from the university automatically followed.

Issue: Must a student be given, if conditions permit, notice and hearing prior to suspension even if that suspension proves to be interim?

Answer: Yes.

Reasoning of the Court: These students will be irreparably harmed by any significant extension of their present suspension. Their suspension has been imposed without due process of law. Because of the unusual circumstances in this case, however, the suspensions may stand if the university immediately serves notice to the students and affords a hearing within one week.

Stricklin v. Regents of University of Wisconsin, 297 F. Supp. 416. United States District Court, W.D. Wisconsin. March, 1969.

Facts: Several students at the University of Wisconsin participated in violent disorders on the campus. The Board of Regents, upon hearing an oral presentation by the Chief of the Department of Protection and Security of the University in which he described the violent conduct of the students, suspended the students immediately without any kind of notice or hearing pending a formal hearing thirteen days later.

Issue: May a student be temporarily suspended pending a full hearing at a later date if no reason exists which would make it impossible or unreasonably difficult to hold a preliminary hearing?

Answer: No.

Reasoning of the Court: "Unless the element of danger to persons or property is present, suspension should not occur without specification of charges, notice of hearing, and hearing." "When the appropriate university authority has reasonable cause to believe that danger will be present if a student is permitted to remain on the campus pending a decision following a full hearing, an interim suspension may be

imposed. But the question persists whether such an interim suspension may be imposed without a prior 'preliminary hearing' of any kind. The constitutional answer is inescapable. An interim suspension may not be imposed without a prior preliminary hearing, unless it can be shown that it is impossible or unreasonably difficult to accord it prior to an interim suspension."

Additional Comments: Only the facts in each case can determine if it is actually impossible or unreasonably difficult to hold a preliminary hearing. Even when it is impossible or unreasonably difficult to hold such a hearing prior to interim suspension, procedural due process requires that such a hearing must be provided at the earliest practical time.

IV. EQUAL PROTECTION

Zachry v. Brown, 299 F. Supp. 1360. United States District Court, N.D. Alabama, S.D. June, 1967.

Facts: Two students at a public junior college were "administratively withdrawn" from the college because they did not conform to hair styles permitted for men. The boys wore their hair in a "page-boy" style as a part of their dress to promote an image for the band in which they played.

Issue: Is the classification of male students by their hair style a violation of the equal protection clause of the Fourteenth Amendment when that classification is not based on health, discipline, moral or social reasons?

Answer: Yes.

Reasoning of the Court: "The wide latitude permitted . . . administrators of public colleges to classify students with respect to dress, appearance and behavior must be respected and preserved by the court. However, the equal protection clause of the Fourteenth Amendment prohibits classification upon an unreasonable basis." "It needs to be emphasized that the defendants have not sought to justify such classification for moral or social reasons. The only reason stated upon the hearing of this case was their understandable personal dislike of long hair on men students." This classification fails to pass constitutional muster.

Mollere v. Southeastern Louisiana College, 304 F. Supp. 826. U. S. District Court, W.D. Arkansas, Fayetteville Division. September, 1969.

Facts: Southeastern Louisiana College promulgated a rule requiring unmarried women students under 21 not living with their parents or a close relative, to live in campus residence halls unless exception was granted by the Dean of Women. The reason for the rule was to meet the financial obligations which arose out of the construction of the dormitories. A group of upperclass women under 21 brought action against the College claiming that the rule violated the equal protection clause of the Fourteenth Amendment to the U. S. Constitution.

Issue: May a college require a certain group of students to live on campus, not for the welfare of the students themselves, but simply to increase the revenue of the housing system?

Answer: No.

Reasoning of the Court: The burden of expense falls on some students but not on others. The sole reason offered by the College is that the students comprised the precise number of students required to fill existing vacancies in the dormitories. "This is the type of irrational discrimination impermissible under the Fourteenth Amendment." "To select a group less-than-all to fulfill an obligation which should fall equally on all, is a violation of equal protection no matter how the group is selected."

Additional Comments: The court stated that for purposes of the instant case it might be conceded that a state university may require all or certain categories of students to live on campus in order to promote the education of those students. As yet, there has been no case on this point.

Calbillo v. San Jacinto Junior College, 305 F. Supp. 857. United States District Court, S.D. Texas. November, 1969.

Facts: A junior college student, enrolled in a public institution, was indefinitely suspended solely on the ground that he had grown a beard in violation of a college regulation. The college had promulgated a regulation which stated in essence that male students were required to wear reasonable hair styles and were not to have beards or excessively long sideburns.

Issue: Is a rule which prohibits beards and excessively long sideburns or requires that students wear reasonable hair styles constitutionally permissable?

Answer: No.

Reasoning of the Court: "Thus, the school officials are under a burden to justify this effort to regulate personal appearance whether that attempted justification be in terms of discipline, health, morals, physical danger to others, or 'distraction' of others from their school work." ". . . this Court also realizes that when a public agency chooses to use the awesome power of the state to deny a person access to a public education, it must do so with good reason."

Kirstein v. Rector and Visitors of the University of Virginia, 309 F. Supp. 184. United States District Court, E.D. Virginia. February, 1970.

Facts: The Board of Visitors of the University of Charlottesville adopted a resolution for a three-stage plan (over a three year period) which would eliminate any sex barriers to admission at the University. Several women brought action to compel their admission to the University claiming that

denial of admission on the basis of sex violated their rights under the equal protection clause of the Fourteenth Amendment. The women also claimed that there was no assurance that the proposed plan would be adopted by the Legislature of Virginia.

Issue: May a state deny to women an equal opportunity for education based solely on sex?

Answer: No.

Reasoning of the Court: ". . . it seems clear to us that the Commonwealth of Virginia may not now deny to women, on the basis of sex, educational opportunities at the Charlottesville campus that are not afforded in other institutions operated by the state." "We hold, and this is all we hold, that on the facts of this case these particular plaintiffs have been, until the entry of the order of the district judge, denied their constitutional right to an education equal with that offered men at Charlottesville and that such discrimination on the basis of sex violates the Equal Protection Clause of the Fourteenth Amendment." The Court also approved the University's three-year plan to drop all admissions barriers based on sex.

Additional Comments: The Court also dismissed the liability of state administrators in reference to the 1964 Civil Rights Act holding that government minority applied.

Reichenberg v. Nelson, 310 F. Supp. 248. United States District Court, D. Nebraska. March, 1970.

Facts: A student at a state-supported college was refused registration for the second term because his appearance did not conform to college dress regulations. The student had a mustache which extended below the corners of his mouth and his sideburns were below the ear lobe.

Issue: May a student be constitutionally barred from admission to a state-supported college if that ban is based solely upon the length of his hair?

Answer: No.

Reasoning of the Court: "Courts are reluctant to interfere with the relationships existing between students and administrators within the school system unless conflicts arise which 'directly and sharply implicate basic constitutional values'." Students do not leave fundamental rights on the school doorstep when they enter an institution and when the state, through its public schools, abridges a right guaranteed by the Constitution it bears a substantial burden of justification. Registration cannot be denied a student simply because he chooses to exercise

his constitutional right and the right to wear one's hair at any length or in any desired manner is an ingredient of personal freedom protected by the United States Constitution.

Additional Comments: There have been many similar cases in recent years involving high school students. In the most recent cases of this type the courts have rendered decisions consistent with the conclusions in the instant case.